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OLC 72-0399

27 March 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Senator Case's 17 March Letter to Comptroller General
On Section 402 of the Foreign Assistance Act of 1971
(P. L. 92-226, amending Section 8 of the Foreign
Military Sales Act (22 USC 2321b))

1. In line with reports that "... CIA has provided and is providing surplus arms to foreign forces in Southeast Asia." (Senate Report 92-431, pg. 18), section 402 imposes four requirements with respect to defense articles transferred to foreign countries (foreign recipients) by CIA:

a. The value is to be charged against the overall annual ceiling

b. When the ceiling is reached, the value is to be charged as an expenditure against funds appropriated under the Foreign Assistance Act of 1961 for military assistance;

c. In the absence of a certification to the Comptroller General that an article has not been transferred, its value is to be reimbursed either to:

(1) The general fund of the Treasury, or

(2) The military assistance appropriation, if the article is not excess at the time of delivery.

d. The transfers are to be included in the President's quarterly report to Congress on aggregate deliveries by country, including original acquisition costs and value at time of delivery. (Additional reporting is required if "major weapons system" is involved.)

2. The "value" of excess defense articles is the key operative term in the law and is defined as not less than 1/3 of the amount paid at time of

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acquisition. Charges against military assistance appropriations and reimbursements to the Treasury become effective only after the aggregate

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3. It is noted that additional requirements are attached to defense articles under the free world forces provisions of P.L. 89-367 as recently amended by the Defense Procurement Authorization Act. The amendment requires the recipients of defense articles to enter certain agreements on the use, security, accountability and disposition of defense articles furnished with funds of any agency. Further, the President must make a report on the agreements to both Houses of Congress.

4. It would appear that normally an investigation such as suggested by Senator Case would be undertaken by the Comptroller General only at the request of a committee having jurisdiction over the matter in question. Perhaps someone like Carl Marcy, of the Senate Foreign Relations Committee, would feel that an investigation stirred up by John Marks, of Senator Case's staff, is an improper invasion of the Senate Foreign Relations Committee's prerogative.

SIGNED

Assistant Legislative Counsel

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